SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 364

AUTOMOBILE DRIVERS AND DEMONSTRATORS LOCAL UNION NO. 882, RALPH REINERTSEN, ITS BUSINESS AGENT, AND J. J. ROHAN, ITS SECRETARY,

Petitioners,

vs.

GEORGE E. CLINE,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON AND BRIEF IN SUPPORT OF PETITION.

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INDEX

Subject Index

Cases Cited

STATUTES CITED

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Petitioners,

vs.

GEORGE E. CLINE,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

To the Honorable Supreme Court of the United States:

Automobile Drivers and Demonstrators Local Union No. 882, Ralph Reinertsen and J. J. Rohan, the petitioners herein, pray that a writ of certiorari be issued to review the final decree of the Supreme Court of the State of Washington affirming the decree of the Superior Court of King County, Washington, permanently enjoining the peaceful picketing of respondent's place of business.

Statement of Matter Involved

The case involves the right of a labor union and its officers to picket under the Fourteenth Amendment to the Federal Constitution.

The petitioner, Automobile Drivers and Demonstrators Local Union No. 882 (hereinafter referred to as the union) is a labor union (R. 4), its membership being composed of automobile salesmen in the Seattle area (R. 4).

The respondent is engaged in the business of buying and selling used automobiles (R. 4). He has never employed a member of the union nor any salesmen, doing all the selling himself (R. 6, 36). He was a member of an automobile dealers association composed of used car dealers and organized for the purpose of negotiating on behalf of its members collective bargaining contracts with labor unions. As a member of this association respondent was bound by a collective bargaining agreement between the union and the association which required him, and all other member dealers, to keep his business closed on Saturdays, Sundays and certain specified holidays (R. 5, 34, 43, 45, 70). The respondent, in violation of this agreement, sold used cars on Saturdays (R. 6, 32, 47), and the union picketed his place of business to compel him to observe the contract (R. 6, 30, 43). The pickets (normally two, sometimes one and occasionally three or four) patrolled along the sidewalk in front of respondent's place of business carrying "sandwich" signs reading "THIS FIRM UNFAIR TO LOCAL 882 A. F. of L." (R. 7, 37-38).

As a result of this picketing two employees—a mechanic and a handyman—quit work (R. 31, 37), respondent's sales fell off (R. 7, 31) and drivers for supply houses refused to deliver automobile parts and materials (R. 7, 31, 41). In order to obtain such supplies he was required to transport them in his own vehicle (R. 41).

The trial court specifically found that "the picketing was entirely peaceful, the pickets neither using force nor threatening physical violence nor molesting anyone either seeking to enter or leave plaintiff's (respondent's) place of business" (R. 7). (And this finding was approved by the Supreme Court of Washington, R. 23). The trial court concluded, however, that there was no "labor dispute" under the laws of the State of Washington, and, therefore, the picketing was "unlawful"; and that to enjoin it would not infringe the petitioners' right of freedom of speech as guaranteed by the First and Fourteenth Amendments to the Federal Constitution (R. 8, 96). The decree permanently restrained and enjoined the petitioners from "in any manner picketing plaintiff's (respondent's) place of business" (R. 16).

Affirming the decree, three judges dissenting, the Supreme Court of Washington also held that there was no labor dispute under the laws of Washington, because the respondent employed no member of the union; *and that the picketing, although peaceful, was, nevertheless, "coercive", hence the Fourteenth Amendment afforded the petitioners no protection* (R. 24). Said the court, in part:

> "Appellants (petitioners) contend that a 'labor dispute' was shown to exist under the definition of that term as found in Rem. Rev. Stat. (Sup.), Sec. 7612-13;[1] that in picketing respondent's place of business appellant union was merely exercising its right of freedom of speech guaranteed by the first and fourteenth amendments to the constitution of the United States.
>
> * * * * * * *

[1] This section of the Washington statute—an analogue of the Federal Norris-Laguardia Act—defines labor dispute: "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

We are of the opinion that this case is controlled by the principles announced in the *Gazzam* case, *supra*.[2] * * * ; that respondent did not have in his employ at the time this action was commenced, nor had he ever had in his employ, a member of appellant union.

We are firmly of the opinion that the picketing in this case was coercive, and, being coercive, is not protected by the statutes nor by the state or Federal constitutions.

We see no good purpose in again reviewing and analyzing the cases set out and discussed in the *Gazzam* case. We appreciate fully what has been said by the supreme court of the United States, and we have in this opinion considered the additional authority by that court cited by appellant, but we are still of the same view as expressed in the *Gazzam* case.

We may say further that we are entirely in accord with the majority opinion in the case of *Hanke* v. *International Brotherhood of Teamsters, etc., Local No. 309*, 133 Wash. Dec. 625,[3] and reference is here made to that case for a further discussion of our own cases, including the *Gazzam* case, and cases from the supreme court of the United States." (R. 24-25).

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[2] *Gazzam* v. *Building Service Employees International Union, etc.*, 29 Wn. (2d) 488, 188 P. (2d) 97, (holding that peaceful picketing of an employer's place of business is not protected by the constitutional guaranty of free speech and is unlawful, where the employees are not members of the picketing union, and the purpose of the picketing is to force the employees to join the union.) Petition for certiorari pending in this Court to review the final judgment reported in 134 Wash. Dec. 34, 207 P. (2d) 699.

[3] 133 Washington Decisions 625, 207 P. (2d) 206, holding on authority of the *Gazzam* case, *supra*, that peaceful picketing by a union is not protected by the Fourteenth Amendment where the employer does not employ any member of the union. Petition for certiorari has been docketed in this Court as No. 309, October Term 1949.

Jurisdiction

1. Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257, which provides, in part:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * *
>
> (3) By writ of certiorari, * * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution, * * *."

2. The following cases are believed to sustain the jurisdiction of this Court:

American Federation of Labor v. *Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568;

Bakery & Pastry Drivers & Helpers Local 802, etc. v. *Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816;

Cafeteria Employees Union, Local 302, v. *Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126.

3. The Supreme Court of the State of Washington is the highest court of the state.[4]

4. The judgment of which review is sought is a final judgment of the Supreme Court of Washington (R. 25).

5. The judgment herein sought to be reviewed was filed on July 6, 1949 (R. 25). (On the same day the Supreme Court of Washington made and entered an order fixing the amount of bond for costs on petition for certiorari, which bond was filed on that day.)

6. The Federal question of substance which has been decided by the State court is that the constitutional guaranty

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[4] State Constitution, Article IV, Sections 1 and 4, Remington's Revised Statutes of Washington, Volume 1.

of freedom of discussion is not infringed by the common law policy of a State which forbids peaceful picketing by labor unions where there is no immediate employer-employee dispute. That decision of the Supreme Court of the State of Washington is squarely in conflict with the decisions of this Court construing the Fourteenth Amendment to the Federal Constitution. (*American Federation of Labor* v. *Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568; *Bakery & Pastry Drivers & Helpers Local 802, etc.* v. *Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816; *Cafeteria Employees Union, Local 302*, v. *Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126).

7. The Federal question was timely raised and considered. At the conclusion of the hearing, and before the trial court had announced its oral decision, on the respondent's application for a temporary injunction, petitioners' counsel made the following statement to the trial judge:

> "Mr. Bassett: While Your Honor understands that we are asking that the plaintiff's application for temporary injunction be denied, I do not think we made such a motion. I would like to make a formal motion to that effect at this time and have the record show that we claim the protection of the First and Fourteenth Amendments to the Constitution of the United States." (R. 88).

Following the hearing the trial court rendered an oral decision (R. 88) and later filed a memorandum decision (R. 88) in which he passed upon the constitutional question, denied petitioners' motion and, accordingly, made findings of fact and conclusions of law, which also ruled upon the petitioners' claimed right under the Federal Constitution, in the following language:

> "That said picketing was coercive, and, therefore, an injunction forbidding the same would not infringe

the defendants' (petitioners') right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States" (R. 8).

Thereafter the petitioners filed their answer to the respondent's complaint, specifically claiming the protection of the First and Fourteenth Amendments to the Constitution as follows:

> "That in conducting the aforesaid picketing the defendants (petitioners) were merely exercising their right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States" (R. 12).

Subsequently, the cause having come on for trial on the merits before the same judge, the parties, through their counsel stipulated in open court that the case be submitted for final judgment on the merits, based on the evidence previously introduced on respondent's application for a temporary injunction and the arguments presented (R. 97), and the court having reconsidered and reaffirmed the written memorandum opinion filed and the findings of fact and conclusions of law previously made and entered, made and entered its decree permanently enjoining the petitioners from "in any manner picketing" the respondent's place of business (R. 15-16).

The Supreme Court of Washington, in affirming the trial court's decree, likewise passed upon the petitioners' claimed constitutional right, saying:

> "Appellants (petitioners) contend that a 'labor dispute' was shown to exist in this case between respondent and appellant union, under the definition of that term as found in Rem. Rev. Stat. (Sup.), Sec. 7612-13; *that in picketing respondent's place of business appellant union was merely exercising its right of freedom of speech guaranteed by the first and fourteenth amend-*

ments to the constitution of the United States." (Emphasis supplied) (R. 24).

and concluding:

> "We are firmly of the opinion that the picketing in this case was coercive, and, being coercive, is not protected by the statutes nor by the state or *Federal constitutions* (R. 24).
>
> * * * *We appreciate fully what has been said by the Supreme Court of the United States,* and we have in this opinion considered the additional authority by that court cited by appellant, but we are still of the same view as expressed in the *Gazzam* case." (Emphasis supplied) (R. 24).

The Question Presented

Is the constitutional guaranty of freedom of communication infringed by the common law policy of a State forbidding peaceful picketing by a labor union where there is no immediate employer-employee dispute?

Reasons Relied On for the Allowance of the Writ

The Supreme Court of Washington has decided an important question arising under the First and Fourteenth Amendments to the Constitution of the United States, involving the right of labor unions to make known, through peaceful picketing, the facts of a labor dispute, in a way probably untenable and in conflict with the applicable decisions of this Court in the following cases:

Senn v. *Tile Layers Protective Union,* 301 U. S. 468, 81 L. Ed. 1229, 57 S. Ct. 857;

Thornhill v. *Alabama,* 310 U. S. 88, 84 L. Ed. 1093, 60 S. Ct. 736;

Carlson v. *California,* 310 U. S. 106, 84 L. Ed. 1104, 60 S. Ct. 746;

American Federation of Labor v. *Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568;
Bakery & Pastry Drivers & Helpers, Local 802 v. *Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816;
Cafeteria Employees Union v. *Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126.

The Supreme Court of Washington has held that peaceful picketing by a labor union is "unlawful" where there is no immediate employer-employee dispute and, being thus unlawful, is not protected by the Fourteenth Amendment. This holding is directly in conflict with the decisions of this Court in *American Federation of Labor* v. *Swing*, *Bakery & Pastry Drivers & Helpers* v. *Wohl*, and *Cafeteria Employees Union* v. *Angelos*, *supra*. The Supreme Court of Washington says:

> "• • • peaceful picketing of an employer's place of business is not protected by the constitutional guaranty of free speech and is unlawful, where the employees are not members of the picketing union and the purpose of the picketing is to force the employees to join the union or to compel the employer to enter into a contract which would, in effect, compel his employees to become members of the union." (*Hanke* v. *Teamsters Union*, 133 Wash. Dec. 625, 633, 207 P. (2d) 206, quoting the *Gazzam* case, *supra*).

In *American Federation of Labor* v. *Swing*, *supra*, this Court said:

> "We are asked to sustain a decree which for purposes of this case asserts as the common law of a state that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him.
>
> "Such a ban of free communication is inconsistent with the guaranty of freedom of speech. • • • The

> scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. A state can not exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employer and those directly employed by him. The interdependence of economic interests of all engaged in the same industry has become a commonplace. *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209. The right of free communication can not therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. * * *"

The decree of the Supreme Court of Washington manifestly deprives the petitioners of the right to make known the facts of the dispute between them and respondent, through peaceful picketing, solely because *respondent employs no member of the union in the operation of his business.* But this was the precise factual situation in *Bakery & Pastry Drivers & Helpers Local 802, etc.* v. *Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816, *supra*, and in *Cafeteria Employees Union, Local 302* v. *Angelos*, 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126, *supra*, and this Court in each of these cases applied the doctrine of the *Swing* case, in the *Wohl* case saying:

> "* * * One need not be in a 'labor dispute' as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive" (page 774)

and in the *Angelos* case:

> "But, as we have heretofore decided, a state can not exclude workingmen in a particular industry from putting their case to the public in a peaceful way 'by

drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him.' " (page 296)

Your petitioners respectfully submit that the writ of certiorari should issue to the end that this Court may review the decision of the Supreme Court of Washington and determine whether that court has deprived petitioners of rights guaranteed by the Fourteenth Amendment to the Federal Constitution.

SAMUEL B. BASSETT,
JOHN GEISNESS,
Attorneys for Petitioners.

STATE OF WASHINGTON,
County of King, ss:

SAMUEL B. BASSETT, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the petitioners herein; that he has read the foregoing petition and knows the contents thereof, and that the same is true to the best of his knowledge and belief, except as to matters therein stated to be alleged upon information and belief, and as to those matters he believes the same to be true.

SAMUEL B. BASSETT.

Subscribed and sworn to before me this 12th day of September, 1949.

JOHN GEISNESS,
[SEAL.] *Notary Public in and for the State of Washington, Residing at Seattle.*

I hereby certify that I have examined the foregoing petition, and that in my opinion it is well founded in law as well as in fact and not interposed for delay, and that the case is one in which the prayer of the petitioners should be granted.

SAMUEL B. BASSETT,
Attorney for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 364

AUTOMOBILE DRIVERS AND DEMONSTRATORS LOCAL UNION NO. 882, RALPH REINERTSEN, ITS BUSINESS AGENT, AND J. J. ROHAN, ITS SECRETARY,

Petitioners,

vs.

GEORGE E. CLINE,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

I.

Opinion of the Court Below

The opinion of the Supreme Court of Washington (R. 17) is reported in Volume 133 Washington Decisions 644, 207 P. (2d) 216.

II.

Jurisdiction

Jurisdiction is fully covered in the foregoing petition and the statement there made is adopted here by reference.

III.

Statement of the Case

A concise statement of the facts relevant to the constitutional question involved is set forth in the foregoing petition under the heading "STATEMENT OF MATTER INVOLVED" and, in the interest of brevity, is adopted here by reference.

Other facts relating to the dispute between petitioners and respondent, which we do not consider relevant to the constitutional question presented, but which were mentioned in the opinions of the courts below, are stated here for the convenience of the Court:

The respondent had been engaged in the business of selling used automobiles for about four and one-half years prior to May 19, 1948—the date of the trial (R. 30). Sometime in 1945 he became a member of the union (R. 42) and when initiated he was obligated to abide by the constitution and by-laws of the union and the applicable terms and conditions of collective bargaining contracts which the union made with employers of automobile salesmen (R. 66). In the spring of 1946 respondent also became a member of the dealers association, mentioned in the foregoing petition (R. 43). At that time the union was attempting to obtain an agreement with the association whereby the members thereof would close their places of business on Saturdays (R. 43). Respondent was opposed to Saturday closing (R. 45) and, as a representative of the association, he personally participated in the contract negotiations between the union and the association in an effort to prevent agreement thereon (R. 44). Despite his efforts, however, the contract which the union and the association finally executed on June 20, 1946, provided, among other things, that used car dealers would close their show rooms and used car lots not later than

6:00 P. M. on all week days and keep them closed on Saturdays, Sundays and certain specified holidays, and required them to display a conspicuous sign reading "CLOSED SATURDAYS, SUNDAYS AND HOLIDAYS." (R. 44, 69-70). Thereafter for a period of about three months the respondent, pursuant to the constitution and by-laws of the union and in obedience to the contract between the union and the dealers association, kept his place of business closed on Saturdays (R. 45). On August 30, 1947, while the contract was still in full force and effect and while respondent was still a member of the union in good standing, he notified the union that henceforth he would keep open for business on Saturdays, and he removed from his used car lot the sign which he had previously displayed and substituted one stating "OPEN SATURDAYS" (R. 6, 32). The picketing of respondent's premises followed immediately and continued without interruption, until enjoined by the court the following May (R. 6, 8). Prior to the commencement of this action the respondent had been dropped from the union (R. 5), and he had withdrawn from the dealers association (R. 5).

The contract between the union and the association remained in effect until the 14th day of April, 1948, when a new contract was executed between the parties which required the members of the association to keep their places of business closed on Saturdays after 1:00 P. M. (R. 6, 47). At that time the respondent was not a member of the association (R. 72). After the execution of the new contract petitioners offered to discontinue the picketing if respondent would conduct his business in accordance with the terms of the new contract (R. 48-49, 72). The respondent refused and shortly thereafter commenced this action.

Although these additional facts were noticed by the courts below their decisions were not rested thereon. The

judgment of the Supreme Court of Washington was rested solely on the undisputed fact that the *respondent employed no member of the union.* That court held that because the respondent did not employ any member of the union there was no "labor dispute" under Washington law, and hence the picketing, although peaceful, was "coercive" and "unlawful". And because the picketing was thus unlawful the court further held that to enjoin it would not deprive the petitioners of the right of freedom of speech as guaranteed by the Fourteenth Amendment.

IV.

Specifications of Error

1. The State Supreme Court erred in holding that the injunction does not deprive petitioners of the right of freedom of speech guaranteed by the Fourteenth Amendment.

2. The State Supreme Court erred in holding that the constitutional guaranty of freedom of speech is not infringed by the judicial policy of the state which forbids peaceful picketing where there is no immediate employer-employee dispute.

V.

Summary of Argument

A. The decree permanently enjoining the petitioners "from in any manner picketing" respondent's place of business deprives them of the right of freedom of discussion and communication guaranteed by the Fourteenth Amendment.

B. The constitutional guaranty of freedom of discussion and communication is infringed by the judicial policy of the State of Washington which forbids peaceful picketing by workingmen where there is no immediate employer-employee dispute.

VI.

ARGUMENT

A. The Decree Permanently Enjoining the Petitioners "From In Any Manner Picketing" Respondent's Place of Business Deprives Them of the Right of Freedom of Discussion and Communication Guaranteed by the Fourteenth Amendment.

The picketing enjoined by the decree was admittedly peaceful and free from physical coercion or intimidation and when initiated was conducted for the purpose of compelling the respondent to observe a contract which bound him and other used car dealers in the Seattle area to close on Saturdays. Later, when that contract expired and respondent was not a party to the new contract which required closing on Saturdays after 1:00 P. M., the purpose of the picketing was to induce respondent to conduct his business in conformity therewith.

The Supreme Court of Washington (three judges dissenting) held that there was no "labor dispute" and the picketing was unlawful under the common law of the state because:

> (1) The respondent employed no member of the Union;
>
> (2) At the time of trial he was not himself a member of the union and was not bound by any contract with the union concerning the manner in which his business was to be conducted.

Hence, the court concluded that the injunction did not deprive petitioners of the right of freedom of discussion and communication as guaranteed by the Fourteenth Amendment, saying:

> "We are of the opinion this case is controlled by the principles announced in the *Gazzam* case, *supra* . . .

We are firmly of the opinion that the picketing in this case was coercive, and, being coercive, is not protected by the statutes nor by the state or Federal constitutions.

We see no good purpose in again reviewing and analyzing the cases set out and discussed in the *Gazzam* case. We appreciate fully what has been said by the supreme court of the United States, and we have in this opinion considered the additional authority by that court cited by appellant, but we are still of the same view as expressed in the *Gazzam* case.

We may say further that we are entirely in accord with the majority opinion in the case of *Hanke* v. *International Brotherhood of Teamsters, etc., Local No. 309,* 133 Wash. Dec. 625, and reference is here made to that case for a further discussion of our own cases, including the *Gazzam* case, and cases from the supreme court of the United States."

It will be observed that the Supreme Court of Washington, in the opinion, fails to point out why the rule laid down by this Court in *American Federation of Labor* v. *Swing,* 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568; *Bakery & Pastry Drivers & Helpers Local 802, etc.,* v. *Wohl,* 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816; and *Cafeteria Employees Union, Local 302,* v. *Angelos,* 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126, upon which the petitioners particularly relied, did not apply to the facts of this case, but merely rested its judgment on two of its own recent decisions (*Gazzam* v. *Building Service Employees International Union, etc.,* 29 Wn. (2d) 488, 188 P. (2d) 97, and *Hanke* v. *International Brotherhood of Teamsters, etc., Local No. 309,* 133 Washington Decisions 625), both of which are now pending in this Court on petitions for writs of certiorari. For this reason we must briefly refer to those decisions.

In the *Gazzam* case the Supreme Court of Washington held that peaceful picketing of an employer's place of busi-

ness is not protected by the constitutional guaranty of free speech and is unlawful where the employees are not members of the picketing union and the purpose of the picketing is to induce the employees to join the union. Although the majority opinion cited the *Swing* case it made no attempt whatever to distinguish it. We submit the two cases are directly in conflict.

In the *Hanke* case the Supreme Court of Washington held that peaceful picketing of a copartnership business which is conducted by the partners without hired help is not protected by the constitutional guaranty of free speech and is unlawful where the purpose of the picketing is to induce them to conduct their business in conformity with a contract regulating business hours, which the union had with employers of union labor in the same industry. The court there said:

> "The facts in the instant case fall squarely within the inhibition of the *Gazzam* case. • • •
>
> This conclusion is the view of the majority of this court as presently constituted, and therefore, without further comment thereon, we decline to overrule the *Gazzam* case, *supra.*
>
> Appellants strenuously contend that our holding in the *Gazzam* case, *supra,* is in direct conflict with certain decisions of the United States supreme court and for that reason the *Gazzam* case should now be overruled. The decisions which appellants cite and on which they rely as supporting their contention are the following: *Senn* v. *Tile Layers Protective Union, Local No. 5,* 301 U. S. 468, 81 L. Ed. 1229, 57 S. Ct. 857; *Thornhill* v. *Alabama,* 310 U. S. 88, 84, L. Ed. 1093, 60 S. Ct. 736; *American Federation of Labor* v. *Swing,* 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568; *Bakery & Pastry Drivers & Helpers Local 802, etc.* v. *Wohl,* 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816; *Cafeteria Employees Union, Local 302* v. *Angelos,* 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126.

Our view of the effect of those decisions does not coincide with that of the appellants.

We do not believe that the United States supreme court has ever held that the right of free speech is an absolute right, to be protected regardless of the deleterious effect so produced in regard to other interests also protected by the Federal constitution; nor do we believe that the United States supreme court has ever said that a state is without power to abridge this right where such a course is necessary to protect property rights and is in the general interests of the community.

* * * * * * *

In our opinion, there is small reason for holding that the appellant union, acting under the guise of protecting the union's freedom of speech, cannot be restrained from depriving the respondents of the liberty of lawfully conducting their business in the only manner that it could be profitably conducted.

We are clearly of the opinion that the decree of the trial court in the instant case is not contrary to the provisions of the constitution of the United States."

This holding and the reasoning which influenced the Supreme Court of Washington to so hold, we submit, is in conflict with that of this Court in *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468, 81 L. Ed. 1229, 57 S. Ct. 857. Senn conducted a small business employing one or two journeymen tile layers and one or two helpers, depending upon the amount of work he had contracted to do at the time. He also worked with the tools of the trade. Neither he nor any of his employees was a member of the union and neither had any contractual relations with the union. The picketing was conducted for the purpose of inducing Senn to unionize his business and execute a union contract. This Court ruled:

"Members of a union might, without special statutory authorization by a State, make known the facts

of a labor dispute, *for freedom of speech is guaranteed by the Federal Constitution.*" (Emphasis supplied)

And the reasoning of the Court (Mr. Justice Brandeis speaking) was:

"The sole purpose of the picketing was to acquaint the public with the facts and, by gaining its support to induce Senn to unionize his shop. There was no effort to induce Senn to do an unlawful thing. There was no violence, no force was applied, no molestation or interference, no coercion. There was only the persuasion incident to publicity. * * *

The unions acted, and had the right to act, as they did, to protect the interests of their members against the harmful effect upon them of Senn's action. Compare *American Steel Foundries* v. *Tri-City Central Trades Council, supra,* (257 U. S. 208, 209). Because his action was harmful, the fact that none of Senn's employees was a union member, or sought the union's aid, is immaterial. * * *

There is nothing in the Federal Constitution which forbids unions from competing with non-union concerns for customers by means of picketing as freely as one merchant competes with another by means of advertisements in the press, by circulars, or by his window display. Each member of the unions, as well as Senn, has the right to strive to earn his living. Senn seeks to do so through exercise of his individual skill and planning. The union members seek to do so through combination. Earning a living is dependent upon public favor. To win the patronage of the public each may strive by legal means. * * *. It is true that disclosure of the facts of the labor dispute may be annoying to Senn even if the method and means employed in giving the publicity are inherently unobjectionable. But such annoyance like that often suffered from publicity in other connections, is not an invasion of the liberty guaranteed by the Constitution. Compare *Pennsylvania R. Co.* v. *United States R. Labor Bd.*, 261 U. S. 72. It is true, also that disclosure of

the facts may prevent Senn from securing jobs which he hoped to get. But a hoped-for job is not property guaranteed by the Constitution. And the diversion of it to a competitor is not an invasion of a constitutional right."

In the instant case when the dispute arose the respondent was a member of the union and as such was bound by its constitution and by-laws [5] to abide by the terms and conditions of the contract between the union and the association; and as a member of the dealer's association he was also bound by that contract to keep his used car lot closed on Saturdays. The union picketed to compel respondent to keep his union commitments and observe his contract, and this was an entirely lawful objective. At the time of trial the contract between the union and association had expired and the new contract between the parties provided for Saturday closing after 1:00 P. M. The purpose of the picketing then was to persuade respondent, by use of economic pressure, not to sell used cars after 1:00 P. M. on Saturdays and this likewise was a perfectly lawful objective because the manner in which respondent was conducting his business was detrimental to the economic welfare of the union and its members, who were in competition with the respondent in the sale of used automobiles.

Applying the principles of the *Senn* case, this Court has repeatedly held that such appeal for public support, through peaceful picketing, is protected by the Fourteenth Amendment.

American Federation of Labor v. *Swing*, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568;

Bakery & Pastry Drivers & Helpers Local 802, etc. v. *Wohl*, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816;

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[5] Exhibit 2, Article VII, Section 4 (R. 67), provides: "Any member of this local violating any of the other provisions of any contract between this local and our employers shall be expelled from membership in the union."

Cafeteria Employees Union, Local 302 v. *Angelos*, 320 U. S. 293, 88 L. Ed. 58, 62 S. Ct. 126.

In *American Federation of Labor* v. *Swing, supra*, the Court said:

> "We are asked to sustain a decree which for purposes of this case asserts as the common law of a State that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him.
>
> *Such a ban of free communication is inconsistent with the guaranty of freedom of speech.*" (Emphasis supplied)

The decree which the Supreme Court of Washington affirmed was as unrestricted as that in the *Swing* case. It enjoined all picketing and in so doing deprived petitioners of freedom of speech.

B. The Constitutional Guaranty of Freedom of Discussion and Communication Is Infringed by the Judicial Policy of the State of Washington Which Forbids Peaceful Picketing by Workingmen Where There Is No Immediate Employer-Employee Dispute.

Before this Court decided *American Federation of Labor* v. *Swing, supra*, the Supreme Court of Washington had established, in a long line of decisions commencing in 1935 (some of which are: *Safeway Stores* v. *Retail Clerks' Union, Local No. 148*, (1935), 184 Wash. 322, 51 P. (2d) 372; *Adams* v. *Building Service Employees International Union, Local No. 6*, (1938), 197 Wash. 242, 84 P. (2d) 1021; *Fornili* v. *Auto Mechanics' Union, Local No. 297*, (1939), 200 Wash. 283, 93 P. (2d) 422; *Shively* v. *Garage Employees Local Union No. 44*, (1940), 6 Wn. (2d) 560, 107 P. (2d) 354), a judicial policy which forbids peaceful picketing by

labor unions in the absence of an immediate employer-employee dispute.

The first case which came before the Supreme Court of Washington, involving the right to peacefully picket, after *American Federation of Labor* v. *Swing*, was *O'Neil* v. *Building Service Employees International Union, Local No. 6*, (1941), 9 Wn. (2d) 507, 115 P. (2d) 662. In that case the plaintiff operated two apartment houses with the assistance of her family and without the help of outside employees. The union peacefully picketed the apartment houses in an effort to induce the plaintiff to join the union. Although there was no immediate employer-employee dispute the court, as then constituted, four judges dissenting, held, on the authority of *American Federation of Labor* v. *Swing, supra*, that the peaceful picketing of plaintiff's apartment houses could not be enjoined in view of the Fourteenth Amendment, saying in part:

> "The Constitution of the United States is the supreme law of the land. However much we may disagree with the interpretation of that Constitution by the United States Supreme Court, such interpretation is binding on us."

The next case which came before the Washington Supreme Court, involving the right to picket, was *S & W Fine Foods* v. *Retail Delivery Drivers & Salesmen's Union, Local 353*, (1941), 11 Wn. (2d) 262, 118 P. (2d) 962. The union in that case picketed the plaintiff's warehouse because its salesmen, who were satisfied with their wages, hours and working conditions, had refused to join the union. The court again, one judge dissenting, on the authority of *American Federation of Labor* v. *Swing, supra*, held that the right to peacefully picket was protected by the Fourteenth Amendment. This seemed to be the settled law of the State of Washington until December 22, 1947,

when the Supreme Court of Washington handed down its decision in *Gazzam* v. *Building Service Employees International Union, Local 262, et al.*, 29 Wn. (2d) 488, 188 P. (2d) 97, *supra*. In that case the court, as then constituted, four judges dissenting, held that the peaceful picketing of an employer's place of business is not protected by the constitutional guaranty of free speech and is unlawful, where the employees are not members of the picketing union and the purpose of the picketing is to organize them. And in so holding the court expressly overruled its two preceding decisions which had adopted the rule of *American Federation of Labor* v. *Swing*.

As we have observed, the decree in the instant case, as in *Hanke* v. *International Brotherhood of Teamsters, etc., Local No. 309*, 133 Wash. Dec. 625, was affirmed on the authority of the *Gazzam* case. Thus, the Supreme Court of Washington has, in effect, ruled that the judicial policy of the state which forbids peaceful picketing where there is no immediate employer-employee dispute does not abridge the Fourteenth Amendment, and this holding, we submit, is directly in conflict with the decisions of this Court in the *Swing*, *Wohl* and *Angelos* cases, *supra*.

In the *Swing* case this Court said:

> "'More thorough study of the record and full argument have reduced the issue to this: is the constitutional guaranty of freedom of discussion infringed by the common law policy of a state forbidding resort to peaceful persuasion through picketing merely because there is no immediate employer-employee dispute?'"

Answering this question, the Court said:

> "All that we have before us, then, is an instance of 'peaceful persuasion' disentangled from violence and free from 'picketing en masse or otherwise conducted' so as to occasion 'imminent and aggravated danger.'

Thornhill v. Alabama, 210 U. S. 88, 105, 84 L. Ed. 1093, 1104, 60 S. Ct. 736. We are asked to sustain a decree which for purposes of this case asserts as the common law of a state that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him.

"Such a ban of free communication is inconsistent with the guaranty of freedom of speech. That a state has ample power to regulate the local problems thrown up by modern industry and to preserve the peace is axiomatic. But not even these essential powers are unfettered by the requirements of the Bill of Rights. The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become a commonplace. American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184, 209, 66 L. Ed. 189, 199, 42 S. Ct. 72, 27 A. L. R. 360. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interests, can no more be barred because of concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in Thornhill's Case."

In the *Wohl* case this Court, reversing the judgment of the Court of Appeals of New York, holding that there was no "labor dispute" within the meaning of the statutes of New York because the respondents employed no one to assist

them in conducting their business, and that the injunction against picketing did not violate the Fourteenth Amendment, said:

> "So far as we can ascertain from the opinions delivered by the state courts in this case, those courts were concerned only with the question whether there was involved a labor dispute within the meaning of the New York statutes and assumed that the legality of the injunction followed from a determination that such a dispute was not involved. Of course that does not follow: one need not be in a 'labor dispute' as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive."

In the *Angelos* case the plaintiff and his copartners operated a cafeteria, themselves performing all the work pertaining to their business without the assistance of others. The union picketed the cafeteria "in an attempt to organize it." Again reversing the Court of Appeals of New York, which had enjoined the picketing, this Court said:

> "In Senn v. Tile Layers Protective Union, 301 U. S. 468, 81 L. Ed. 1229, 57 S. Ct. 857, this Court ruled that members of a union might, 'without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution.' 301 U. S. at 478, 81 L. Ed. 1236, 57 S. Ct. 857. Later cases applied the Senn Doctrine by enforcing the right of workers to state their case and to appeal for public support in an orderly and peaceful manner regardless of the area of immunity as defined by state policy. American Federation of Labor v. Swing, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568; Bakery & P. Drivers & Helpers, I. B. T. v. Wohl, 315 U. S. 769, 86 L. Ed. 1178, 62 S. Ct. 816. To be sure the Senn Case related to the employment of 'peaceful picketing and truthful publicity.' 301 U. S. at 482, 81

L. Ed. 1238, 57 S. Ct. 857. That the picketing under review was peaceful is not questioned. • • • We have before us a prohibition as unrestricted as that which we found to transgress state power in American Federation of Labor v. Swing, 312 U. S. 321, 85 L. Ed. 855, 61 S. Ct. 568, supra. The Court here, as in the Swing Case, was probably led into error by assuming that if a controversy does not come within the scope of state legislation limiting the issue of injunctions, efforts to make known one side of an industrial controversy by peaceful means may be enjoined. But, as we have heretofore decided, a state cannot exclude working men in a particular industry from putting their case to the public in a peaceful way 'by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him.' American Federation of Labor v. Swing, 312 U. S. at 326, 85 L. Ed. 857, 61 S. Ct. 568."

Respectfully submitted,

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